

AMENDED IN SENATE JUNE 6, 2012

AMENDED IN ASSEMBLY APRIL 25, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1406

**Introduced by Committee on Judiciary (Feuer (Chair), Atkins,
Dickinson, Huber, Huffman, Monning, and Wieckowski)**

March 7, 2011

An act to amend ~~Section~~ *Sections 2104 and 7605 of, and to repeal
Section 3151.5 of,* the Family Code, relating to dissolution of marriage.

LEGISLATIVE COUNSEL'S DIGEST

AB 1406, as amended, Committee on Judiciary. Dissolution of marriage: ~~disclosure; proceedings.~~

~~Existing~~

(1) *Existing* law requires each party to a proceeding for dissolution or nullity of marriage or legal separation of the parties to serve on the other party a preliminary declaration of disclosure of assets, as specified, after or concurrently with service of the petition for dissolution.

This bill instead would require the petitioner to serve the preliminary declaration of disclosure either concurrently with the petition for dissolution or within 60 days of filing the petition, and would require the respondent to serve the other party with the preliminary declaration of disclosure either concurrently with the response to the petition or within 60 days of filing the response, unless those time periods are extended by written agreement of the parties or by court order. The bill also would require the preliminary declaration of disclosure of assets to include all tax returns filed by the declarant within the 2 years prior to the date that the party served the declaration.

(2) Existing law governs determinations of child custody in proceedings for dissolution of marriage, nullity of marriage, legal separation of the parties, petitions for exclusive custody of the child, and under the Domestic Violence Prevention Act. Under existing law, a court is authorized to appoint private counsel to represent the child's interests in a custody or visitation proceeding if the court determines that appointing counsel would be in the best interest of the child. The child's appointed counsel is required to gather and present facts that bear on the best interest of the child, including the child's wishes if the child so desires. Under existing law, the court is required to consider a statement of issues and contentions of the child's counsel when the court determines custody or visitation.

This bill would eliminate the requirement that the court consider a child's attorney's statement of issues and contentions when the court determines custody or visitation.

(3) Existing law authorizes the court, in dissolution of marriage, nullity of marriage, legal separation, and child custody and visitation proceedings, to order any party, except a governmental entity, to pay the amount reasonably necessary for attorney's fees and for the cost of maintaining or defending the proceeding, subject to augmentation or modification from time to time and before entry of judgment. Under existing law, a party who lacks the financial ability to hire an attorney may ask the court, as an *in pro per* litigant, to order the other party to pay a reasonable amount to allow the unrepresented party to retain an attorney in a timely manner.

This bill would require the court, in addressing a request for attorney's fees and costs in child custody and visitation proceedings, to order attorney's fees and costs for an *in pro per* litigant if the court finds that there is a disparity in access to funds to retain counsel and that one party is able to pay for the legal representation of both parties.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 2104 of the Family Code is amended to
- 2 read:
- 3 2104. (a) Except by court order for good cause, as provided
- 4 in Section 2107, in the time period set forth in subdivision (f), each
- 5 party shall serve on the other party a preliminary declaration of

1 disclosure, executed under penalty of perjury on a form prescribed
2 by the Judicial Council. The commission of perjury on the
3 preliminary declaration of disclosure may be grounds for setting
4 aside the judgment, or any part or parts thereof, pursuant to Chapter
5 10 (commencing with Section 2120), in addition to any and all
6 other remedies, civil or criminal, that otherwise are available under
7 law for the commission of perjury. The preliminary declaration of
8 disclosure shall include all tax returns filed by the declarant within
9 the two years prior to the date that the party served the declaration.

10 (b) The preliminary declaration of disclosure shall not be filed
11 with the court, except on court order. However, the parties shall
12 file proof of service of the preliminary declaration of disclosure
13 with the court.

14 (c) The preliminary declaration of disclosure shall set forth with
15 sufficient particularity, that a person of reasonable and ordinary
16 intelligence can ascertain, all of the following:

17 (1) The identity of all assets in which the declarant has or may
18 have an interest and all liabilities for which the declarant is or may
19 be liable, regardless of the characterization of the asset or liability
20 as community, quasi-community, or separate.

21 (2) The declarant's percentage of ownership in each asset and
22 percentage of obligation for each liability where property is not
23 solely owned by one or both of the parties. The preliminary
24 declaration may also set forth the declarant's characterization of
25 each asset or liability.

26 (d) A declarant may amend his or her preliminary declaration
27 of disclosure without leave of the court. Proof of service of any
28 amendment shall be filed with the court.

29 (e) Along with the preliminary declaration of disclosure, each
30 party shall provide the other party with a completed income and
31 expense declaration unless an income and expense declaration has
32 already been provided and is current and valid.

33 (f) The petitioner shall serve the other party with the preliminary
34 declaration of disclosure either concurrently with the petition for
35 dissolution, or within 60 days of filing the petition. The respondent
36 shall serve the other party with the preliminary declaration of
37 disclosure either concurrently with the response to the petition, or
38 within 60 days of filing the response. The time periods specified
39 in this subdivision may be extended by written agreement of the
40 parties or by court order.

1 *SEC. 2. Section 3151.5 of the Family Code is repealed.*

2 ~~3151.5. If a child is represented by court appointed counsel,~~
3 ~~at every hearing in which the court makes a judicial determination~~
4 ~~regarding custody or visitation the court shall consider any~~
5 ~~statement of issues and contentions of the child's counsel. Any~~
6 ~~party may subpoena as a witness any person listed in the statement~~
7 ~~of issues and contentions as having provided information to the~~
8 ~~attorney, but the attorney shall not be called as a witness.~~

9 *SEC. 3. Section 7605 of the Family Code is amended to read:*

10 7605. (a) In any proceeding to establish physical or legal
11 custody of a child or a visitation order under this part, and in any
12 proceeding subsequent to entry of a related judgment, the court
13 shall ensure that each party has access to legal representation to
14 preserve each party's rights by ordering, if necessary based on the
15 income and needs assessments, one party, except a government
16 entity, to pay to the other party, or to the other party's attorney,
17 whatever amount is reasonably necessary for attorney's fees and
18 for the cost of maintaining or defending the proceeding during the
19 pendency of the proceeding.

20 ~~(b) Whether one party shall be ordered to pay attorney's fees~~
21 ~~and costs for another party, and what amount shall be paid, shall~~
22 ~~be determined based upon (1) the respective incomes and needs~~
23 ~~of the parties, and (2) any factors affecting the parties' respective~~
24 ~~abilities to pay. When a request for attorney's fees and costs is~~
25 ~~made under this section, the court shall make findings on whether~~
26 ~~an award of attorney's fees and costs is appropriate, whether there~~
27 ~~is a disparity in access to funds to retain counsel, and whether one~~
28 ~~party is able to pay for legal representation of both parties. If the~~
29 ~~findings demonstrate disparity in access and ability to pay, the~~
30 ~~court shall make an order awarding attorney's fees and costs. A~~
31 ~~party who lacks the financial ability to hire an attorney may request,~~
32 ~~as an in pro per litigant, that the court order the other party, if that~~
33 ~~other party has the financial ability, to pay a reasonable amount~~
34 ~~to allow the unrepresented party to retain an attorney in a timely~~
35 ~~manner before proceedings in the matter go forward.~~

36 (c) Attorney's fees and costs within this section may be awarded
37 for legal services rendered or costs incurred before or after the
38 commencement of the proceeding.

39 (d) The court shall augment or modify the original award for
40 attorney's fees and costs as may be reasonably necessary for the

1 prosecution or defense of a proceeding described in subdivision
2 (a), or any proceeding related thereto, including after any appeal
3 has been concluded.

4 (e) Except as provided in subdivision (f), an application for a
5 temporary order making, augmenting, or modifying an award of
6 attorney's fees, including a reasonable retainer to hire an attorney,
7 or costs, or both, shall be made by motion on notice or by an order
8 to show cause during the pendency of any proceeding described
9 in subdivision (a).

10 (f) The court shall rule on an application for fees under this
11 section within 15 days of the hearing on the motion or order to
12 show cause. An order described in subdivision (a) may be made
13 without notice by an oral motion in open court at either of the
14 following times:

15 (1) At the time of the hearing of the cause on the merits.

16 (2) At any time before entry of judgment against a party whose
17 default has been entered pursuant to Section 585 or 586 of the
18 Code of Civil Procedure. The court shall rule on any motion made
19 pursuant to this subdivision within 15 days and prior to the entry
20 of any judgment.